Supreme Court, U.S.
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IN THE

Supreme Court of the United States

NO..... 79-1393

HOWARD COURTWRIGHT; SAM CUTRELL; RICHARD CYR; JIM DOYLE; CARL GUSTAFSON; GENE HINES; TERRY HUCKINS; DON PETERS; ROGER PIERCE; ELDON RHODES; JOE RIELLY; JON SCROGGINS; DENNIS SMITH; WAYNE STALLSWORTH; GENE TUGGLE; PAUL ULLERICH; and FRED WOOLSEY,

Petitioners,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; SAFEWAY STORES, INC.; DENVER RETAIL GROCERS & RETAIL CLERKS UNION LOCAL NO. 7, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, LOCAL NO. 634; THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL UNION NO. 1; DELIVERY DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 435; MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 537; and WAREHOUSE AND DISTRIBUTION EMPLOYEES UNION, LOCAL UNION NO. 452,

Respondents.

PETITION FOR WRIT OF CERTIORARI

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HOWARD COURTWRIGHT; SAM CUTRELL; RICHARD CYR; JIM DOYLE; CARL GUSTAFSON; GENE HINES; TERRY HUCKINS; DON PETERS; ROGER PIERCE; ELDON RHODES; JOE RIELLY; JON SCROGGINS; DENNIS SMITH; WAYNE STALLSWORTH; GENE TUGGLE; PAUL ULLERICH; and FRED WOLLSEY,

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; SAFEWAY STORES, INC.; DENVER RETAIL GROCERS & RETAIL CLERKS UNION LOCAL NO. 7, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, LOCAL NO. 634; THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL UNION NO. 1; DELIVERY DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 435; MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 537; and WAREHOUSE AND DISTRIBUTION EMPLOYEES UNION, LOCAL UNION NO. 452,

Respondents.

PETITION FOR WRIT OF CERTIORARI

Petitioners herein respectfully pray that this Honorable Court issue its writ of certiorari to review a judgment of the United States Court of Appeals for the Tenth Circuit and represent the following:

1. THE JUDGMENT SOUGHT TO BE REVIEWED

A copy of the judgment sought to be reviewed is attached as an appendix to this petition. Petitioners are unaware that the opinion has, as yet, been officially reported. It has been unofficially reported at 21 EPD (CCH) para. 30, 456.

2. JURISDICTIONAL BASES

The judgment of the Court of Appeals was rendered on December 5, 1979. No petition for rehearing was filed with that Court. The provisions of **Title 28, United States Code, §1254** grant jurisdiction to this Court to review that judgment.

3. THE QUESTION PRESENTED

In Petitioners' view, the question presented by their petition is:

Whether the decision of this Court in **International Brotherhood of Teamsters v. United States,** 431 U.S. 324 (1977), requires a United States District Court, having entered a consent decree modifying, and partially abrogating, a seniority system established by collective bargaining, to vacate, pro tanto, the provisions of such decree upon the petition of employees adversely affected thereby.

4. STATUTES INVOLVED

The following provisions of Title VII of the Civil Rights Act of 1964 (P.L. 88-352, Title VII, 78 Stat. 252, et seq.; as amended by P.L. 92-261, Title VII, 86 Stat. 103, et seq.; 42 U.S.C. §2000e, et seq.) are here involved:

> **Section 703(h)** — "Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority system, ... provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin ..." (42 U.S.C. §2000e-2(h)).

> **Section 706(g)** — "If the [district] court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate ..." (42 U.S.C. §2000e-5(g)).

5. STATEMENT OF THE CASE

In 1976 the Equal Employment Opportunity Commission ("EEOC") commenced an action against Safeway Stores, Inc. ("Safeway"), pursuant to the authority granted to it by Section 706(f) (1) and (3) and (g) of Title VII of the above referenced Act (42 U.S.C. §2000e-5(f) (1) and (3) and (g)), asserting that Safeway was engaging in unfair employment practices in its various facilities located in Denver, Colorado. Joined as parties, pursuant to the provisions of Rule 19(a) (2), Federal Rules of Civil Procedure, were several labor organizations which represented various Safeway employees in separate collective bargaining units, including Local 435, affiliated with the International Brotherhood of Teamsters ("Local 435").

At the time of the commencement of this action, a collective bargaining agreement between Safeway and Local 435 provided that the competitive seniority of each employee within Local 435's unit was to be determined by such employee's length of service within the bargaining unit — no credit was given for any employment by Safeway in positions outside this unit.

Petitioners are a group of Safeway employees who, prior to the commencement of the instant litigation, had transferred from other jobs with Safeway into the Local 435 unit. All are white males, except one, who is a black male. Each of them, upon his transfer into the Local 435 unit, "forfeited" his previously accumulated seniority, in accordance with the contractual seniority system. None of them were made parties to the litigation, nor was any formal notice of its pendency given to them.

In September, 1976, the EEOC and Safeway, joined by all the labor organizations which had been made parties to the action, entered into a stipulated consent decree, with approval of the district court, which was designed to dispose of the litigation. This decree contained extensive provisions relating to various subjects. Among those provisions were two relating to the seniority of Safeway employees.

Paragraph I.C.6 of the decree defined seniority as "the length of continuous employment **with the Company** ..." (emphasis supplied).

Paragraph VIII.C provided that:

> "... when a [job] vacancy occurs, an employee may transfer laterally to another job classification within the same facility in which he or she is employed for which he or she is qualified or qualifiable without loss of seniority."

In implementing the terms of this decree, Safeway originally interpreted them to require it to grant to all of its employees competitive seniority rights, for purposes of job bidding, layoffs and recalls, based upon each employee's length of service within any bargaining unit. Accordingly, it originally "restored" to Petitioners the seniority "lost" by them when they previously transferred into the Local 435 unit.

When Local 435 learned of Safeway's actions, however, it sought a clarification of the decree's terms with the result that the district court determined that:

> "The Decree mandates that the seniority of all employees who have transferred from one job or facility to another **since the effective dates of the Decree** is to be computed for all purposes (including bidding for trucking runs) on a "Company-wide basis."" (emphasis supplied).

and

> "An employee retains his/her seniority after a transfer ... provided such transfer occurred **after the effective date of the Decree.**" (emphasis supplied).

Under the decree, as thus interpreted, the **contractual** seniority system continued to apply to all employees (both majority and minority) who had transferred into the Local 435 unit **before** the decree, but **company-wide** seniority was granted to all employees (both majority and minority) who transferred **after** the decree was entered.

Between the date of the decree's entry and the date of the court's clarifying order, seven employees transferred into the Local 435 unit and were granted seniority based upon their total length of service with Safeway. Of these seven, all were males; five were white; one was black; and one was Spanish-surnamed.[1]

Shortly after the entry of the clarifying order, when it became apparent that Local 435 was not, and could not, adequately represent Petitioners' interests,[2] Petitioners sought, and were allowed, to intervene in the action. They asserted, essentially, that the decree's provisions respecting seniority were not framed to accomplish any legitimate purpose under the Act. Such provisions, they asserted, were being utilized by senior white male employees to gain enhanced seniority rights to the detriment of junior minority employees. They alleged, therefore, that the decree's pertinent provisions should be amended so as to make them applicable to all employees, rather than distinguishing between employees based solely upon the artificial and fortuitous event of the date the decree was signed, or, in the alternative, to apply them only to minority employees, under the presumption that only such employees would have been affected by any past unfair employment practices.

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[1]The district court held no evidentiary hearing upon the issues raised by Petitioners and, consequently, made no findings of fact. Various parties filed affidavits with that court, some of which were factually inconsistent, one with another, although not substantially so.

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[2]Petitioners do not assert that Local 435 violated its obligations owed to them under the standards adopted in *Vaca v. Sipes*, 361 U.S. 171 (1967). The fact that they concede that Local 435 exercised good faith, however, does not amount to a concession that Local 435 was an adequate judicial representative for them. Note Appendix, at page 4, n. 2.

Before Petitioners' motion was entirely disposed of by the district court, this Court announced its opinion in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977), which held, inter alia, that the proviso to Section 703(h) of the Act prohibited judicial abrogation of a seniority system established by collective bargaining, absent evidence that its adoption was motivated by unlawful intent.

In light of the *Teamsters* decision, both Petitioners and two of the defendant labor organizations suggested to the district court that a modification in the decree was dictated, so as to remove therefrom the blanket grant of company-wide seniority to all post-decree transferees and so as to substitute therefor provisions which established a procedure for recognition of the seniority rights of any minority member improperly denied job transfers in the past. See *Teamsters, supra*, and *Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976).

Although requested by several parties to do so, the district court held no evidentiary hearing upon the issues raised. Rather, after considering various joint submissions by the parties, that court merely entered a minute order denying Petitioners' and two labor organizations', motions to modify.[3]

Petitioners instituted an appeal to the Court of Appeals. While that appeal was pending, however, all parties petitioned the district court to amend the decree by deleting therefrom on a prospective basis, the seniority transfer provisions contained therein. Such joint request was granted. The court-ordered seniority system, therefore, was in effect for approximately 18 months.

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[3]Petitioners' original motion was filed in April, 1977, some seven months after the decree's entry and 30 days after the district court's clarifying order was entered. In July, 1977, the district court provisionally denied Petitioners' motion, but directed the parties to present further factual materials to it. This was done in November, 1977, at which time requests were made for an evidentiary hearing. The court's minute order was entered on January 12, 1978, approximately nine months after the Petitioners' original motion was filed.

6. ARGUMENT

In affirming the district court's denial of relief to Petitioners, the Tenth Circuit acknowledged that the decree granted "enhanced" seniority rights to post-decree transferees, "many of whom had no more cláim to Title VII protection than [Petitioners]." (App., p. 4). Likewise, that Court recognized that, had the consent decree been entered subsequent to the announcement of the *Teamsters* opinion, a legitimate issue respecting the decree's propriety might have been presented. (Id., p. 10).

Nevertheless, it affirmed the district court's refusal to modify the decree on three principal bases, as follows:

a. That relief from a final equitable decree under Rule 60(b), Federal Rules of Civil Procedure, cannot take the form of retroactive alteration of that decree;

b. That *Teamsters* did not require a different conclusion;

and

c. That, in any event, there was no proof presented to the trial court that Local 435's contractual seniority system was "bona fide" within the meaning of the Section 703(h) proviso.

In reaching these conclusions, however, the Court of Appeals failed to take cognizance of the vital distinctions between the factual circumstances presented by this case and those involved in the adjudications relied upon by it. Those distinctions consist of the following:

a. Petitioners here were not made parties to the original litigation; they received no formal notice of the same; and they took no part in preparing the consent decree. They admit, of course, that, in the "typical" lawsuit, it may well be presumed that an employee's collective bargaining agent will provide adequate representation to him. Here, however, because of Local 435's necessary representation of two or more groups of employees with conflicting interests, Local 435 could not adequately represent all those interests. Indeed, after the decree's entry, that

labor organization made claims, and took positions, diametrically opposed to Petitioners' interests. Thus, in allowing Petitioners to intervene at the trial level, the district court made a specific finding that "their interest is not adequately represented by the existing parties in this suit."

This being the factual predicate, there exists reasonable grounds for believing that the district court's decree, as well as its later clarifying order, was not "final," at least under the traditional concepts of "res judicata," in any sense binding upon Petitioners. *Sam Fox Publishing Co. v. United States,* 366 U.S. 683 (1961). See, also, *Acha v. Beame,* 570 F.2d 57 (2d Cir., 1978), approving the vacation of a summary judgment, certified as final under *Rule 54(b),* after this Court's pronouncement in *Teamsters, supra,* was published. Given these circumstances, the strictures upon modification of an equitable decree, contained within *Rule 60(b)* or otherwise, cannot be applied.

Furthermore, even if it be conceded, arguendo, that only a prospective modification of the decree is authorized, surely such a modification could be effective from the date of the filing of Petitioners' motion with the district court — a date nearly one year prior to the date that the decree was actually modified.

b. The Court of Appeals grounded its opinion, in part, upon its conclusion that Petitioners had failed to show sufficiently changed conditions to warrant a modification in the decree's terms (App., p. 9). Yet, both Petitioners and the other parties to the litigation were given no opportunity to present such evidence, since the district court failed to grant their requests for an evidentiary hearing. Likewise, the Court of Appeals refused to remand the matter to the lower court for this purpose.

c. While the language of Section 703(h) does not, literally, impose any limitation upon a federal court's authority, that provision, read in conjunction with the Act's grant of jurisdiction to the federal judiciary to enjoin intentional violations of the Act (42 U.S.C. §2000e-5(g)), constitutes a positive proscription upon the relief to be granted under Title VII. In a substantive sense, this restraint is similar to the restraint against injunctions in actions

involving "labor disputes," which is to be found within the provisions of the Norris-La Guardia Act (29 U.S.C. §104). Thus considered, the *Teamsters* decision involved not merely a matter of substantive law, but it established parameters for the exercise of a federal court's subject matter jurisdiction. If this be an accurate analysis, that portion of the decree which purported to affect the contractual seniority system was beyond the power of the trial court to adopt.

d. The Court of Appeals noted that there had been no determination made that the contractual seniority system was "bona fide" under Section 703(h). However, the EEOC made no assertion that it was not "bona fide" in its complaint (filed prior to *Teamsters*), nor did any party so contend. On the contrary, Local 435 explicitly contended below that, had it been aware of the *Teamsters'* principle at the time, it would not have joined in approving the consent decree. Finally, all parties agreed to, and the trial court approved of, a return to the contractual seniority system approximately 18 months after the decree's entry. Surely, if the EEOC had any questions with respect to the system's bona fides, it could not have consented to its reinstitution.

7. CONCLUSION

Petitioners assert that the decision of the Court of Appeals in this case failed to give to this Court's decision in *Teamsters, supra,* the effect which this Court intended. As a result, its decision is, we submit, inconsistent with the basic tenets of that decision. This Court should grant its writ of certiorari to review the judgment of the Court of Appeals for the purpose of re-emphasizing the attention which the federal courts must pay to the Congressionally-approved proviso to Section 703(h) of the Act.

Respectfully submitted,

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APPENDIX

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff-Appellee,

vs.

SAFEWAY STORES, INC.; DENVER RETAIL GROCERS & RETAIL CLERKS UNION LOCAL NO. 7; AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, LOCAL NO. 634; THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL UNION NO. 1; DELIVERY DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 435; MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 537; and WAREHOUSE AND DISTRIBUTION EMPLOYEES UNION, LOCAL UNION NO. 452,

Defendants-Appellees,

No. 78-1138

vs.

HOWARD COURTWRIGHT; SAM CUTRELL; RICHARD CYR; JIM DOYLE; CARL GUSTAFSON; GENE HINES; TERRY HUCKINS; DON PETERS; ROGER PIERCE; ELDON RHODES; JOE RIELLY; JON SCROGGINS; DENNIS SMITH; WAYNE STALLSWORTH; GENE TUGGLE; PAUL ULLERICH; and FRED WOOLSEY,

Intervenors-Appellants.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
(D.C. Case No. 75-F-1184)

John A. Criswell of Criswell & Patterson, Englewood, Colorado, for Intervenors-Appellants.

Martin D. Buckley of Hornbein, MacDonald & Fattor, Denver, Colorado, for Defendant-Appellee Delivery Drivers, Warehousemen and Helpers, Local Union No. 435.

Gregory A. Eurich (with Richard W. Comfort on the brief) of Holland & Hart, Denver, Colorado, for Defendant-Appellee Safeway Stores.

Marilyn S.G. Urwitz (with Abner W. Sibal, General Counsel; Joseph T. Eddins, Associate General Counsel; and Beatrice Rosenberg, Assistant General Counsel, on the brief), Washington, D.C., for Plaintiff-Appellee Equal Employment Opportunity Commission.

Walter Brauer (with Thomas B. Buescher on the brief) of Brauer & Simons, Denver, Colorado, for Defendant-Appellee Amalgamated Meat Cutters and Butcher Workmen of North America Local No. 634.

Before SETH, Chief Judge, McWILLIAMS and McKAY, Circuit Judges.

McKAY, Circuit Judge.

This action was instituted by the Equal Employment Opportunity Commission (EEOC) pursuant to §706 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e-5(f), (g), alleging unfair employment practices by Safeway Stores, Inc. After the filing of initial pleadings, EEOC, Safeway and the various labor unions made up of Safeway employees joined as defendants pursuant to Fed. R. Civ. P. 19(a) (2) entered into a

lengthy consent decree. Among other things, the decree provided for a change in the calculation of seniority upon transfer from one Safeway labor unit to another: "[W]hen a vacancy occurs, an employee may transfer laterally to another job classification ... for which he or she is qualified or qualifiable without loss of seniority. Selection of applicants for transfer shall be based upon seniority with the Company." Record, vol. 1, at 28, para. VIII.C. "Seniority" is defined in the decree as "the length of continuous employment with the Company computed from the date the employee first reports for work" in any Safeway labor unit (company seniority). Record, vol. 1, at 17, para. I-C-6. In contrast, the various collective bargaining agreement with Safeway provided that seniority would be measured by the length of an employee's service "within the bargaining unit" (unit seniority). Supplemental Record at 31. Therefore, the decree modified the existing seniority system to allow transfers between job classifications, and therefore between bargaining units, without the loss of seniority accrued since the original date of hire with Safeway.

Safeway initially construed the consent decree to grant company seniority to all of its employees. One of the involved unions, Delivery Drivers, Warehousemen and Helpers, Local Union No. 435, petitioned the district court to enjoin Safeway from acting on this interpretation, and Safeway requested clarification of the decree regarding the seniority provisions. In response, the district court entered an "Order Interpreting the Consent Decree and Granting Injunctive Relief." In pertinent part, that order determined: "The Decree mandates that the seniority of all employees who have transferred from one job ... to another **since the effective date of the Decree** is to be computed for all purposes ... on a company-wide basis." Record, vol. 1, at 171 (emphasis added).

Shortly after the entry of this order, 17 individual members of Local 435 were allowed to intervene in the suit. The intervenors had transferred from another Safeway job into Local 435 prior to the date of the consent decree and, under the court's interpretation of the decree, they would not be credited with company

seniority. Accordingly, their seniority status was adversely affected by the enhanced seniority of post-decree transferees, many of whom had no more claim to Title VII protection than intervenors.[1] In a motion for modification, intervenors insisted that either all employees be accorded company seniority or that only minority members retain seniority advantages upon transfer.[2]

In denying the intervenors' motion, the district court indicated that it would be willing to modify the decree only upon a strong showing:

> (1) that the goals of the Decree would be substantially furthered by such a modification, or (2) that the harm to [the intervenors] outweighs (a) the benefits to minority employees from prospective application of the transfer provisions of the Decree, and (b) any harm that may result from retroactive application of these provisions.

Record, vol. 1, at 181. In addition, the court ordered the parties to meet in an attempt to agree on a modification. When the parties failed to agree or to convince the court of a compelling need for modification, intervenors' further motion for modification was denied, forming the basis of this appeal.

While this appeal was pending, all parties stipulated to certain amendments of the original consent decree. Pursuant to this stipulation, the right to retain company seniority upon transfer terminated on July 1, 1978, approximately a year and a half after the entry of the decree. Those who transferred after the date of the decree but before this amendment became effective retained company seniority.

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[1] One of the intervenors is black and, as of the last available data, two of the post-decree transferees into Local 435 were Spanish-surnamed. All others are white males. Apparently, not all of the intervenors were in fact disadvantaged in the seniority system by transfers under the decree. The evidence on both the numbers and makeup of affected intervenors and protected transferees is grossly incomplete, but resolution of these specifics is not necessary to the conclusion we reach.

[2] Intervenors do not contend that their interests were not fairly represented by Local 435 in the negotiation of the consent decree. *See* Brief for Intervenor-Appellants at 29 n.10. *See also* Bolden v. Pennsylvania State Police, 578 F.2d 912, 918 (3d Cir. 1978).

I.

We consider preliminarily whether the district court erred in interpreting the language of the consent decree to afford company seniority only to post-decree transferees. It is clear that the enforcing court has power to interpret a decree when its language results in confusion. *See Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 438 (1976). *Ridley v. Phillips Petroleum Co.*, 427 F.2d 19 (10th Cir. 1970), demonstrates the breadth of a court's discretion in constructing decrees. We held there that a court should adopt an interpretation which renders the judgment "more reasonable, effective, and conclusive." *Id.* at 23 (quoting *Pen-Ken Gas & Oil Corp. v. Warfield Natural Gas Co.*, 137 F.2d 871 (6th Cir. 1943), *cert. denied*, 320 U.S. 800 (1944)).

The district court's interpretation of the seniority provisions of this consent decree was reasonable in light of the language and purpose of the decree.[3] The interpretation thus become *pari materia* with the decree for purposes of this opinion.

II.

There are two channels through which a consent decree may later be modified.[4] Rule 60(b) allows for relief from a final judgment, order or proceeding upon a showing that "the judgment is void," that "it is no longer equitable that the judgment should have prospective application," or for "any other reason justifying relief." Fed. R. Civ. P. 60(b) (4), (5), (6). In addition, a court of equity has continuing jurisdiction to modify a decree upon changed circumstances, even if the decree was entered by consent. *United States v. Swift & Co.*, 286 U.S. 106 (1932). However, a court's power to modify is not to be lightly exercised to change the settled terms of a consent decree. An appellate court must be particularly reluctant to alter a decree because the entering court has broad discretion in the administration of such decrees. *See Franks v. Bowman Transportation Co.*, 424 U.S. 747, 763-64 (1976); *EEOC v. American Telephone & Telegraph Co.*, 556 F.2d 167, 178 (3d Cir. 1977), *cert. denied*, 438 U.S. 915 (1978); *United States v. Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826, 850 (5th Cir. 1975) *cert. denied*, 425 U.S. 944 (1976); *West Virginia v. Chas. Pfizer & Co.*, 440 F.2d 1079, 1085-86 (2d Cir.), *cert. denied*, 404 U.S. 871 (1971). A trial court's ruling on a Rule 60(b) motion will not be disturbed by this court absent an abuse of discretion. *Winfield Associates, Inc. v. Stonecipher*, 429 F.2d 1087, 1090 (10th Cir. 1970).

Intervenors' first objection to the decree is that a grant of enhanced seniority rights to all post-decree transferees rather than to all employees or to minority transferees only does not fulfill any legitimate purpose of Title VII. We agree that the purpose of Title VII is to secure relief to members of a class — those who may be subject to employment discrimination "on the basis of race, color, religion, sex, or national origin."[5] 42 U.S.C. §2000e-2. But to argue that the terms of a consent decree may not vary from the statutory limits of Title VII[6] is to misconceive the nature of consent decrees and to ignore the strong policy embodied in Title VII in favor of voluntary settlements.[7]. *See Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 44 (1974); *United States v. Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826 (5th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976). Of course, the statute

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[3]Even if the interpretation of the district court is viewed as a substantive change in the intention expressed by the original decree rather than a mere clarification, such an interpretation is within the court's power under the very doctrines the intervenors seek to have us apply in this appeal.

[4]The intervenors do not suggest the procedural approach upon which they rely.

[5]Title VII actions can be brought for the benefit of a potential class of discriminatees rather than for merely those who can prove they were actually victims of discrimination. *See* United States v. Navajo Freight Lines, 525 F.2d 1318, 1324-26 (9th Cir. 1975).

[6]Some victims of discrimination within the target of Title VII may not be readily identified — *i.e.*, those hampered in employment opportunities by their religious affiliation or national origin. Consequently, we are unable to detect from intervenors' figures how many of the post-decree transferees were actually within the literal scope of Title VII. Some broadening of apparent class limits may be necessary to reach all those affected.

[7]At the core of this consent decree is an agreement between Safeway and the unions reached in an attempt to comply with Title VII. Some comparison can be made to a collective bargaining agreement which, according to the Supreme Court, "may go further, enhancing the seniority status of certain employees for the purposes of furthering public policy interests beyond what is required by statute, even though this will to some extent be detrimental to the expectations acquired by other employees under the previous seniority agreement." Franks v. Bowman Transportation Co., 424 U.S. 747, 778-79 (1976) (citing Ford Motor Co. v. Huffman, 345 U.S. 330 (1953)).

may provide the broad outlines of the objectives to be reached and the mechanisms to be used. This court would not countenance governmental coercion in directions wholly outside the purview of congressional pronouncement under the aegis of consent decree negotiations.

It is not the purpose of Rule 60(b) or the inherent powers of chancery to allow the modification of a consent decree merely because it reaches a result which could not have been forced on the parties through litigation. For example, in *V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220 (10th Cir. 1979), this court upheld a consent decree against a Rule 60(b) (4) attack. The appellant claimed that the relief afforded by the consent decree was in violation of federal patent law and was therefore void. This court responded to that "[e]ven if the parties' consent decree does technically run afoul of federal patent law principles, the problem would be relief from an erroneous judgment, not a void one." *Id.* at 226. We held that Rule 60(b) (4) "is not available to correct mere legal error." *Id. See also Mayberry v. Maroney*, 558 F.2d 1159, 1164 (3d Cir. 1977). In *United States v. Swift & Co.*, 286 U.S. 106 (1932), the Supreme Court held that an "injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making." *Id.* at 119. The fact that a consent decree exceeds the law by prohibiting lawful conduct, *Swift & Co. v. United States*, 276 U.S. 311, 328-31 (1928), or by granting an unauthorized remedy, *Walling v. Miller*, 138 F.2d 629 (8th Cir. 1943), *cert. denied*, 321 U.S. 784 (1944), does not render it void. Such efforts may be grounds for reversal on appeal of the judgment, but they are not grounds for collateral attack.

Although a consent decree will not be vacated merely because it is legally erroneous, it may be altered upon a showing of changed circumstances which have produced "hardship so extreme and unexpected" as to make the decree oppressive. *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932); *S.E.C. v. San-Dal Oil & Gas, Inc.*, 433 F.2d 304, 305 (10th Cir. 1970); *Ridley v. Phillips Petroleum Co.*, 427 F.2d 19,22 (10th Cir. 1970). We find no abuse of discretion in the district court's determination that this decree

was not rendered inequitable by changed circumstances. There is no evidence indicating that the facts — *e.g.*, the nature and makeup of Safeway employees and operations — against which the decree and the interpreting order were framed have substantially changed.

Intervenors assert an additional ground for impeaching the consent decree. They argue that *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977), decided after the decree and interpretive order were entered, compels modification. In interpreting §703(h) of Title VII, the Supreme Court in *Teamsters* held that "an otherwise neutral, legitimate seniority system does not become unlawful under Title VII simply because it may perpetuate pre-Act discrimination." *Id.* at 353-54. We are not obliged to decide for this appeal what impact *Teamsters* would have on a consent decree reached after *Teamsters* was decided or on the outcome of subsequent litigation between these parties. We decide only that *Teamsters* does not require retroactive alteration of the consent decree in this case.

A similar situation was presented in *Collins v. City of Wichita*, 254 F.2d 837 (10th Cir. 1958). After the original judgment in *Collins* became final, the Supreme Court reviewed, in another case, the statute upon which the judgment was based and found it unconstitutional. In denying a Rule 60(b) motion based on the subsequent Supreme Court decision, this court held, "A change in the law or in the judicial view of an established rule of law" is not an extraordinary circumstance justifying relief. *Id.* at 839. The Third Circuit confronted a similar change in the case law on a Rule 60(b) motion in *Mayberry v. Maroney*, 558 F.2d 1159 (3d Cir. 1977). It concluded that the power to alter decrees "does not contemplate relief based merely on precedential evolution." *Id.* at 1164. *See also Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371 (1940).

There are some situations where a change in the law warrants modification of an injunctive decree. For instances, in *System Federation No. 91 v. Wright*, 364 U.S. 642 (1961), the Supreme Court balanced the policies of finality and flexibility and determined that an amendment of the statute underlying an

earlier decree made prospective enforcement of the decree inequitable. However, it was the prospective injunctive effect of the decree at issue in *System Federation*. The Court did not purport to erase retroactively the effect of the decree.

Other cases have held that a significant judicial clarification of the law will justify altering the future application of a decree in compelling circumstances. *See Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976); *City & County of Denver v. Denver Tramway Corp.*, 187 F.2d 410, 417 (10th Cir. 1951); *Coca-Cola Co. v. Standard Bottling Co.*, 138 F.2d 788 (10th Cir. 1943). No attempt was made in these cases to undo the effects of past enforcement.[8] In contrast, intervenors seek only the unraveling of seniority already assigned to employees who transferred in reliance to the decree. Because the decree has now been amended to delete the transfer provisions, future application of the decree is no longer in issue.

There is one additional reason why *Teamsters* does not compel our alteration of the seniority provisions of this decree. *Teamsters* prohibits abrogation of a seniority system only if that system is bona fide.[9] Because this case was never litigated, there has been no determination that Safeway's seniority system is bona fide. Intervenors would have us assume at this point the system was bona fide, or at the least, remand the case for a hearing and determination. This we decline to do. The policy of voluntary settlement so important to the enforcement of Title VII would be seriously undermined if the approving court were required to establish the facts underlying the parties' positions before approving a consent decree. The power to compromise exists

[8] *Spangler* differs from the instant case in one other significant way. In *Spangler* the Supreme Court decision which cast doubt on the propriety of continued enforcement of the consent decree as interpreted was decided after the entry of the original decree but before the offending interpretation. The question in *Spangler*, therefore, was not whether a subsequent case requires modification of an interpretive order already made final.

[9] In Acha v. Beame, 438 F. Supp. 70 (S.D.N.Y. 1977), *aff'd*, 570 F.2d (2d Cir. 1978), for instance, the court determined that *Teamsters* required Rule 60(b) relief from an injunction when, during the course of the litigation which produced the injunction, it had been determined that the seniority system involved was "facially neutral ... and followed the ... dictates of" state law. 438 F. Supp. at 73.

partially because of the uncertainties and expense typical of adversary hearing and judicial determination of fact. *West Virginia v. Chas. Pfizer & Co.*, 440 F.2d 1079, 1085-86 (2d Cir.), *cert. denied*, 404 U.S. 871 (1971). We concur with the district court, "A Consent Decree would be worthless if it could be attacked on the ground that had the Court made a particular determination, such relief would then not be statutorily available." Record, vol. 2, at 213.

We are unconvinced that the intervenors should obtain the extraordinary relief they request. The district court did not abuse its discretion in administering the decree.

AFFIRMED.